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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

Chapter 11

SEARS HOLDINGS CORPORATION, *et al.*,

Case No. 18-23538 (RDD)

Debtors.

(Jointly Administered)

**LIMITED OBJECTION OF SVAP POMPANO CITI CENTRE II, L.P., SVAP GOLF
MILL RETAIL II, L.P. AND SVAP II STONES RIVER, LLC TO POTENTIAL
ASSUMPTION AND ASSIGNMENT OF LEASES AND CURE AMOUNTS**

SVAP Pompano Citi Centre II, L.P., SVAP Golf Mill Retail II, L.P. and SVAP II Stones River, LLC (collectively, the “Landlords”), by and through undersigned counsel, file this Limited Objection to Potential Assumption and Assignment of Leases and Cure Amounts relating to the premises described below (the “Limited Objection”), and state as follows:

1. SVAP Pompano Citi Centre II, L.P. is the owner of certain property on which Store No. 1205 is located. The above-referenced debtors (collectively, the “Debtors”) operated Store No. 1205 pursuant to the terms of that certain lease, which expired on December 31, 2018, and as same may have been amended (the “1205 Lease”).
2. SVAP Golf Mill Retail II, L.P. is the owner of certain property on which Store No. 1290 is located. The Debtors operated Store No. 1290 pursuant to the terms of that certain lease, which expired on December 31, 2018, and as same may have been amended (the “1290 Lease”).

3. SVAP II Stones River, LLC is the owner of certain property on which Store No. 2226 is located. The Debtors operate Store No. 2226 pursuant to the terms of that certain lease, which expires on May 12, 2022, and as same may have been amended (the “2226 Lease”).

4. On January 23, 2019, the Debtors filed a *Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* (the “Supplemental Notice”) [ECF No. 1774], which included the 1205 Lease, 1290 Lease and 2226 Lease (collectively, the “Leases”) as additional leases to be potentially assumed and assigned by the Debtors.

5. The Supplemental Notice lists:

- a. 1205 Lease for Store No. 1205 with a contract expiration date of December 31, 2018 and no cure amount;
- b. 1290 Lease for Store No. 1290 with a contract expiration date of December 31, 2018 and no cure amount; and
- c. 2226 Lease for Store No. 2226 with a contract expiration date of May 12, 2022 and a cure amount of \$15,726.00.

6. The Supplemental Notice further provides that the deadline to object to the Debtors’ proposed cure amount is January 31, 2019 at 4:00 p.m. (Eastern Time).

LIMITED OBJECTION TO ASSUMPTION OF LEASES AND CURE AMOUNTS

7. The 1205 Lease and the 1290 Lease expired on December 31, 2018. In the Supplemental Notice, the Debtors acknowledge that the contract expiration date is December 31, 2018. Because the 1205 Lease and 1290 Lease have expired, the Debtors cannot assume them. Nor can such leases be assigned to any third party. As a result, SVAP Pompano Citi Centre II, L.P. and SVAP Golf Mill Retail II, L.P. object to any proposed assumption and assignment of the 1205 Lease and the 1290 Lease. Further, even assuming *arguendo* that such leases could be assumed (which

they cannot be), the proposed cure amount of no amount is incorrect, and the Debtors would be required to pay all amounts due and unpaid under the leases.

8. In the Supplemental Notice, the Debtors' listed proposed cure amount of \$15,726.00 is incorrect. As of the date of filing the Limited Objection, the Debtors must pay SVAP II Stones River, LLC: i) an amount of \$40,480.19 as set forth in the aging detail attached hereto as **EXHIBIT A** to cure known monetary defaults under the 2226 Lease, and ii) amounts that have not yet become due under the 2226 Lease or applicable law but that may become due prior to any proposed assumption of the 2226 Lease, including but not limited to \$10,547.10 for city taxes that will be billed to the Debtors in or around February 2019 (collectively, the "Cure Amount"). Unless the Cure Amount is paid, the Debtors' request to assume the 2226 Lease should be denied.

9. Further, any order approving the assumption of the 2226 Lease must provide that, in addition to payment of the actual cure amount, the Debtors shall be liable for any unbilled charges, and pay all year-end adjustments and other charges when due under the 2226 Lease, regardless of when the charges accrued.

10. The Limited Objection is without prejudice to, and any assumption must be subject to, SVAP II Stones River, LLC's rights pursuant to the 2226 Lease, applicable law, and any obligations due to the landlord arising therefrom.

11. SVAP II Stones River, LLC reserves the right to amend or supplement the Limited Objection in the event the Debtors fail to pay charges due under the 2226 Lease up to and including the date the 2226 Lease is assumed, including but not limited to any applicable attorneys' fees due under the 2226 Lease.

12. In the event the proposed assignee of the Lease changes, or for any other reason, the Landlords reserve their right to object to the proposed assignment based on any applicable grounds.

13. The Landlords join in any objections filed by the Debtors' other landlords with respect to the Supplemental Notice and initial notice to the extent such objections are not inconsistent with the Limited Objection.

WHEREFORE, the Landlords respectfully request that the Court: i) sustain the Limited Objection, ii) deny any request to assume the 1205 Lease and the 1290 Lease as such leases expired on December 31, 2018, iii) require payment of the Cure Amount as a condition to assumption of the 2226 Lease, and iv) grant the Landlords such other and further relief as is just and proper.

Dated: January 30, 2019

Respectfully submitted,

SHRAIBERG, LANDAU & PAGE, P.A.
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By: /s/ Bernice C. Lee
Bernice C. Lee
Florida Bar No. 0073535
Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via CM/ECF Notice of Electronic Filing to all parties registered to receive electronic noticing in this case, and by First Class U.S. Mail and/or Email to the Objection Recipients listed on the below Service List on January 30, 2019.

/s/ Bernice C. Lee

Bernice C. Lee

SERVICE LIST

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Office of the United States Trustee
Attn: Paul Schwartzberg
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201 Varick Street, Room 1006
New York, NY 10014

EXHIBIT A

DB Caption: **LIVE** SVAP & Legacy Properties Property: 2102 Tenant: srm008 Status: Current, Past, Future Age As Of: 02/28/2019 Post To: 02/2019

Aging Detail

Property	Customer	Lease	Status	Trans#	Charge	Date	Month	Current	0-30 Owed	31-60 Owed	61-90 Owed	Over 90 Owed	Over payments	Total Owed		
								Month	Current Owed	0-30 Owed	31-60 Owed	61-90 Owed	Over 90 Owed	Over payments	Total Owed	
Stones River Town Centre (2102)																
2102	Sears, Roebuck and Co. (srm008)															
2102	Sears, Roebuck and Co.	Current	C-238946	oth_irmb	09/19/2018	09/2018		1,110.55	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,110.55
2102	Sears, Roebuck and Co.	Current	C-245599	cam_rec	10/01/2018	10/2018		-299.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	-299.10
2102	Sears, Roebuck and Co.	Current	C-245600	cam_rec	10/01/2018	10/2018		-327.91	0.00	0.00	0.00	0.00	0.00	0.00	0.00	-327.91
2102	Sears, Roebuck and Co.	Current	C-245601	retx_rec	10/01/2018	10/2018		15,992.02	0.00	0.00	0.00	0.00	0.00	0.00	0.00	15,992.02
2102	Sears, Roebuck and Co.	Current	C-245602	retx_rec	10/01/2018	10/2018		-16,763.16	0.00	0.00	0.00	0.00	0.00	0.00	0.00	-16,763.16
2102	Sears, Roebuck and Co.	Current	C-245603	ins_rec	10/01/2018	10/2018		247.37	0.00	0.00	0.00	0.00	0.00	0.00	0.00	247.37
2102	Sears, Roebuck and Co.	Current	C-245604	ins_rec	10/01/2018	10/2018		379.64	0.00	0.00	0.00	0.00	0.00	0.00	0.00	379.64
2102	Sears, Roebuck and Co.	Current	C-257845	retx_est	01/27/2019	01/2019		23,322.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	23,322.70
2102	Sears, Roebuck and Co.	Current	C-261362	cam_est	02/01/2019	02/2019		1,035.08	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,035.08
2102	Sears, Roebuck and Co.	Current	C-261363	ins_est	02/01/2019	02/2019		57.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	57.00
2102	Sears, Roebuck and Co.	Current	C-261364	rnt_br	02/01/2019	02/2019		15,726.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	15,726.00
2102	Sears, Roebuck and Co.							40,480.19	16,818.08	23,322.70	0.00	339.41	0.00	40,480.19		
									40,480.19	16,818.08	23,322.70	0.00	339.41	0.00	40,480.19	

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